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2 Californians Denounce Justice Dept. Backing of Searches Without Warrants

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WASHINGTON—The chairmen of the Senate and House subcommittees on constitutional rights Monday denounced the Justice Department's newly asserted power to search a citizen's home without a warrant in foreign espionage and intelligence cases.

"This goes a giant step backward," said Rep. Don Edwards (D-Calif.), chairman of the House judiciary subcommittee on civil and constitutional rights. "You get back to the national security thing where (former President Richard M.) Nixon claimed he could do anything."

"I know of no legal authority for the Justice Department position," said Sen. John V. Tunney (D-Calif.), chairman of the Senate judiciary subcommittee on constitutional rights.

"I have noticed no exemption in the Fourth Amendment (which bans unreasonable searches and seizures) for foreign intelligence," Tunney added.

Edwards said he was writing to Atty. Gen. Edward H. Levi for an explanation and statutory support of the Justice Department's asserted authority, "which I believe is such a radical position."

Tunney said he planned to question department officials about the policy, which was disclosed by The Times Sunday.

The policy was disclosed in a letter the department had filed in the appeal of John D. Ehrlichman and three others from their civil rights conspiracy convictions in the break-in at the office of Daniel Ellsberg's Los Angeles psychiatrist.

The department took a position different from that of Watergate special prosecutor Henry S. Ruth Jr., who contended that physical searches of a citizen's home or office without a warrant were unconstitutional even if foreign espionage or intelligence were involved.

John C. Keeney, acting assistant attorney general for the criminal division, said in the letter that the department saw no constitutional difference "between searches conducted by wiretapping and those involving physical entries into private premises."

Department officials said Monday that they could cite no instance in which they or their predecessors had publicly asserted authority to break into a citizen's home without a warrant in foreign espionage or intelligence matters. They said, however, that such authority "has long been internal department policy."

A department spokesman said: "To the best of Levi's knowledge and Keeney's knowledge, no attorney general has ever approved such a search."

The spokesman and other department officials said the assertion of authority had resulted only from a desire to avoid having Ruth's position taken as the undisputed stance of the United States. These sources said the FBI and Central Intelligence Agency had not asked the department to assert the authority and had no case involving the use of such authority pending.

However, spokesmen for the two investigative agencies refused Monday to say whether they had used the authority in the past or were using it today. The spokesmen noted that FBI Director Clarence M. Kelley and CIA Director William E. Colby were expected to testify on these questions before Senate and House committees and that any comment would be withheld until their appearances.

In testifying before the Senate Armed Services Committee last January, Colby told of three instances in which the CIA surreptitiously had searched the apartments or businesses of agency employees or former employees. He gave no indication that warrants had been obtained for the searches, which were conducted in 1966, 1969 and 1971.

Mr. Nixon, in a May 22, 1973, statement on Watergate, told of ordering the resumption of "breaking and entering" operations for "national security" purposes in 1970. He said the authority had been rescinded July 29, 1970—five days after his original order had gone out—because of the opposition of former FBI Director J. Edgar Hoover.

The intelligence steps he approved and then rescinded, Mr. Nixon said, "included resumption of certain intelligence operations which had been suspended in 1966."

The White House said Monday it had not been consulted on the Justice Department's latest assertion of authority.

"As we understand it, this is a legal argument in a pending case, and it is something the Justice Department will have to argue," White House spokesman said.

One Justice Department source familiar with the assertion of authority said it seemed false to distinguish between entering a person's home or business without a warrant to plant an electronic listening device and entering to conduct a search.

"If you say there is a distinction," the source said, "and the judge says it doesn't make sense, then the judge could rule that listening to a bug is unconstitutional"—a question the Supreme Court has left unanswered when foreign espionage or intelligence is involved.

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